

purchased it. He proved by another witness, who had opportunities of examining it, that the lot on which the house stood was an eighth part of an acre, and was worth at least \$1,200; that an adjoining lot of double the size, but with a house worth \$400 less than the defendants, had been sold for \$1,600 within three months.

To displace this evidence, the plaintiff called three witnesses to speak to the value of the property. The first was the assessor for the years 1859, '60 and '61. He said that he had assessed its yearly value in 1861 at \$36, representing an absolute value of \$600, which he said was a fair value. The lot is over forty feet front by two chains deep, and might be now worth \$200 or \$300, and the buildings might have cost \$500 or \$600, but are not worth what they cost: he was never inside the house, and had never examined it, with a few to value it, for three years. The next witness said he thought the property worth \$700 to \$800; he had been inside the house, but never up stairs; but he admitted he had never looked at it with a view to value, for he did not expect to be asked. The third and last witness said that before the repairs he thought it worth about \$600, but he had not seen it since the repairs; he should not like to give \$900 now; some might give more, and, perhaps, if he had examined it through, he might value it at more.

The learned Judge reports to us that he directed the jury, "that they ought to be fully satisfied as to the value of the defendant's property before finding a verdict for the plaintiff; that he thought they should not weigh the matter in scales too nicely balanced; and that any reasonable doubt should be in favor of the defendant."

The last part of this charge is what is complained of in the rule; but in the argument the mode in which the jury were directed to weigh the matter was insisted upon as objectionable.

In both respects we think the charge was right.

(To be continued.)

IN THE MATTER OF O'NEILL AND THE CORPORATION OF THE UNITED COUNTIES OF YORK AND PEEL.

Purchase of public roads from Government by County Council—Price and time of payment—By-law unnecessary—Con. Stat. U. C. cap. 54, sec. 226, C. cap. 28, sec. 76.

The county council of any municipality has power, under Con. Stat. U. C. c. 54, sec. 226, to contract with the government for the purchase, at a price beyond \$20,000, of any public works, roads, &c., in Upper Canada, and to issue debentures for the payment thereof in twenty years, without a by-law being passed to authorize the same.

Semble, that if it be thought desirable to pass such a by-law it need not be first submitted to the ratepayers for assent thereto.

Con. Stat. C. cap. 28, sec. 76, specially authorises the sale to any municipal council by the government of the public roads lying beyond the limits of such municipality.

[C. P., H. T., 1865.]

In Hilary Term last, *J. Blevins*, for *T. H. O'Neill*, obtained a rule nisi to quash with costs the following by-law or resolution of the council of the said corporation, passed on the 2nd November last:

"That the warden be, and he is hereby instructed to enter into an agreement with the government to pay them for the York roads the sum fixed by the arbitrators appointed to settle

the price, in six per cent. debentures, running twenty years, in accordance with the original propositions, and that the seal of the corporation be affixed to this resolution.—Adopted.

(Signed) "Wm. TYRRELL, Warden.

"2nd November, 1864.

(Signed) J. ELLIOT, C. C."

[L.S.]

The following grounds were taken in the rule:

1. That being a by-law or resolution for raising upon the credit of the municipality of the united counties a sum of money exceeding twenty thousand dollars, not required for its ordinary expenditure, and not payable within the same municipal year, it was not, before the final passing thereof, or at any time, submitted to the electors of the said municipality for their assent, as required by the municipal institutions, &c., of Upper Canada; and that the said by-law or resolution was uncertain in not fixing the amount for which the said debentures should be issued.

2. That the said by-law or resolution did not ascertain or state the amount of ratable property of the said municipality, nor the amount of the debt created thereby, or intended to be paid, nor the total amount required to be raised annually by special rate for the payment of the said debt and interest, nor the amount of the whole ratable property of the said municipality, according to the last revised assessment rolls, nor the annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the said new debt intended to be created; that no rate, or other provision whatever, was stated or made by the said by-law or resolution to meet or pay off the said debentures, or the interest thereon, nor was there any other by-law providing for the same, or supplying the said several defects; that a portion of the said roads was without the limits of the said corporation, and lay within the limits of the county of Ontario, an independent municipality. Or, why that portion of the said by-law or resolution, which authorised the issuing of debentures, should not be quashed with costs for all or any of the reasons aforesaid, and on the grounds, that the same was uncertain in not fixing the amount for which the said debentures should be issued, and on grounds disclosed in affidavits and papers filed.

The affidavit of *O'Neill*, besides shewing that he was a freeholder in the township of Vaughan and a ratepayer, and interested in the by-law, and that his attorney procured the copy of the by-law or resolution annexed to his affidavit, stated that he had not become aware of the passing of the said by-law or resolution until some time after Michaelmas Term last; that he was informed and believed that the arbitrators referred to in the by-law or resolution fixed the price to be paid by the said corporation to the government for the said roads at seventy-two thousand five hundred dollars, and that he was also informed and believed that the corporation were immediately about to issue debentures by authority of the said by-law or resolution for the purpose of raising the said sum of seventy-two thousand five hundred dollars on the credit of the said municipality.

There was also an affidavit by *James Cotton*, that he was well acquainted with the roads